

dependent from original claim 12. Also in accordance with this amendment, claims 1 and 2 have been canceled.

Entry of the present amendment is hereby requested.

No new matter is introduced into this application by reason of these amendments, all of which are supported by the original specification and claims of the international application.

Contrary to the Examiner's contention, claim groups III and IV clearly satisfy the unity of invention standard of the Patent Cooperation Treaty, in that there is a technical relationship between these two (2) sets of claims which involves the same special technical feature. The same special technical relationship is that the nucleic acids of Group IV precisely and unambiguously encode the production of the pesticidal agents of Group III. The common, special technical feature is manifested in the sequence of amino acids in the polypeptides constituting the pesticidal agents, which is an essential structural element of the polypeptides, encoded by an exactly corresponding sequence of codons in the nucleic acids, as required by the wording of claims 59 and 61. Furthermore, the polypeptides are generated from the nucleic acids by means of well-defined process steps (mRNA, ribosomes, tRNA etc.) which ensure that the product exactly corresponds to the starting material, i.e., a particular DNA can only encode a single peptide. Thus, Groups III and IV are technically related, and clearly fall within the scope of the Examples given in Annex B in the PCT administrative instructions,

or in §1850 of the Manual of Patent Examining Procedure. Indeed, applicants are unaware of any other PCT contracting state in which PCT Rule 13 is applied, in general, in such a way as to find lack of unity between polypeptides and the nucleic acids encoding them.

The fact that no lack of unity objection was raised during international proceedings in this case constitutes a further indication that the claims of Groups III and IV comply with the unity of invention requirement of the Patent Cooperation Treaty.

For all of the above-stated reasons, it is respectfully requested that the requirement for restriction set forth in the October 10, 2002 Official Action be reconsidered and withdrawn, at least insofar as the claims of Groups III and IV are concerned.

In order to be fully responsive, applicants wish to prosecute the subject matter of the Group III claims in this application, i.e., claims 3 and 53-58.

In the event that Groups III and IV are examined together in this application, as requested above, applicants further elect the species 173 APT.seq from among those recited in claims 60 and 62. Claims 59-62 are believed to be readable on the elected species.

This election of species is without traverse, to the extent it is understood that (a) the requirement will be withdrawn upon finding that the genus defined in the claims is

allowable; and (b) any and all species initially withdrawn from consideration will be examined as elected subject matter, unless they are determined to be patentably distinct from the elected or allowed claims.

Should there be a fee associated with the addition of the above-identified claims, please charge the fee to Deposit Account No. 04-1406. A duplicate copy of this paper is enclosed for such charging.

Early and favorable action on the merits of this application is respectfully requested.

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Enclosure